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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/306,084	05/06/1999	PERETZ MOSHES FEDER	5-5-1	3001

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EXAMINER

APPIAH, CHARLES NANA

ART UNIT

PAPER NUMBER

2686

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/306,084	FEDER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Charles Appiah	2686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 February 0205.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 8-10 is/are rejected.
- 7) ☒ Claim(s) 2, 4-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed on February 02 2005 have been fully considered but they are not persuasive. In regard to applicant's argument that Whitehead is disqualified as prior art under 35 U.S.C. 103(c) and subsequently cannot be applied as part of a prior art rejection under 35 U.S.C. 103(a), examiner would like to draw Applicant's attention to the following section of the MPEP:

706.02(l)(1) [R-2] Rejections Under 35 U.S.C. 102(e)/103; 35 U.S.C. 103(c)

**35 U.S.C. 103. Conditions for patentability; non-obvious subject matter.**

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**(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.**

Effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention "were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." This change to 35 U.S.C. 103(c) applies to all utility, design and plant patent applications filed on or after November 29, 1999, including continuing applications filed under 37 CFR 1.53(b), continued prosecution application filed under 37 CFR 1.53(d), and reissues. The amendment to 35 U.S.C. 103(c) **does not affect any application filed before November 29, 1999**, a request for examination under 37 CFR 1.129 of such an application, nor a request for continued examination under 37 CFR 1.114 of such an application.

The instant application was filed before November 29, 1999 and as such the above amendment to the MPEP does not apply and Whitehead still qualifies as appropriate prior art as part of a rejection under 35 U.S.C. 103(a).

In view of the above the rejections using Whitehead are maintained as repeated below.

These rejections are made FINAL.

### ***Claim Rejections - 35 USC § 103***

2. Claims 1, 3, 8, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitehead (6,157,616) in view of Persson et al. (6,028,851).

Regarding claim 1, Whitehead discloses a method of transmitting over a wireless link, the method comprising: adjusting a transmit power of a wireless transmitter in relation to an expected number of ACKs (implied by "WAIT FOR ACKNOWLEDGMENT", step 434, Fig. 4), and one of a number of ACKs lost and a number of ACKs received for radio transmissions over the wireless link, the number of expected ACKs is N (ACK received, step 450 leads to baseline transmit power level being decreased by value delta, see col. 5, lines 45-50, and timeout or NACK leads to increasing the baseline transmit power by delta value, col. 5, lines 25-46). See Fig. 4. Whitehead further teaches computing a current value of a power level based at least in part on an observed ratio between at least two of recent packet transmission successes (reads on ACKs received) and recent packet collisions (reads on ACKs lost), see col. 9, lines 1-35), but fails to explicitly teach wherein the transmit power is adjusted in relation to an expected plurality of ACKs).

Persson discloses a system for controlling access to a cellular radio telecommunications system in which a mobile station seeking access from a base station, transmit at an initial power level, to which it expects an acknowledgment and continues to increase the power until the base station detects the signal containing the access request and indicates the access request being allowed (see col. 4, line 59 to col. 5, line 12), which indicates the system having the capability of the expected acknowledgments for all the transmission at the different power levels.

It would therefore have been obvious to one of ordinary skill in the art to use the teaching of Persson by incorporating the feature of expected ACKs to control

transmission power in combination with whitehead's system in order to control interference and degradation of system performance as taught by Persson.

Regarding claim 3, Whitehead further discloses determining an initial transmit power for the wireless transmitter based on a measurement of a signal received over the wireless link (see col. 4, line 62 to col. 5, line 3).

Regarding claim 8, Whitehead discloses a method of transmitting over a wireless link, the method comprising: adjusting a transmit power of a wireless transmitter based upon a predetermined threshold, the predetermined threshold being in relation to a number of ACKS lost (negative acknowledgment – NACK)/ expected number of ACKs (step 434, Fig. 4), for radio transmissions over the wireless link (see col. 5, lines 25-50 and col. 9, lines 1-35, by computing a current value of a power level based at least in part on an observed ratio between at least two of recent packet transmission successes (reads on ACKs received) and recent packet collisions (reads on ACKs lost).

Regarding claim 9, Whitehead discloses a method of transmitting over a wireless link, the method comprising: adjusting a transmit power of a wireless transmitter based on an implied ACK expected (implied by step 434) for transmission over the wireless link, the ACK expected based on at least one of frames and packets set (see col. 2, line 62 to col. 3, line 24). See Fig. 4. Whitehead fails to explicitly teach using a plurality of expected ACKs.

Persson discloses a system for controlling access to a cellular radio telecommunications system in which a mobile station seeking access from a base

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station, transmit at an initial power level, to which it expects an acknowledgment and continues to increase the power until the base station detects the signal containing the access request and indicates the access request being allowed (see col. 4, line 59 to col. 5, line 12), suggesting the system having the capability of knowing expected acknowledgments for each transmission at different power levels.

It would therefore have been obvious to one of ordinary skill in the art to use the teaching of Persson by incorporating the feature of expected ACKs to control transmission power in combination with Whitehead's system in order to control interference and degradation of system performance as taught by Persson.

Regarding claim 10, Whitehead further discloses wherein the ACKs expected are based on at least one of voice and data (see col. 3, lines 14-24).

### ***Allowable Subject Matter***

3. Claims 2 and 4-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Appiah whose telephone number is 571 272-7904. The examiner can normally be reached on M-F 7:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on 571 272-7905. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CA

  
CHARLES APPIAH  
PRIMARY EXAMINER